

In the Matter of:
KEVIN S. CLAPP vs
MARK COHEN

Kevin S. Clapp Vol II

October 16, 2020

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**KEVIN S. CLAPP vs
MARK COHEN**

Kevin S. Clapp

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEVIN S. CLAPP,

Plaintiff,

vs.

MARK COHEN, JOHN FANNING,

VINCENT NOE, BRUCE TOBIN,

BRIAN TULLY, SCOTT KEARNS.

BRIAN BROOKS, and JAMES FLANAGAN,

Defendants.

VOLUME II

CONTINUED DEPOSITION OF: KEVIN S. CLAPP

Conducted Remotely

O'Brien & Levine Court Reporting Solutions

68 Commercial wharf

Boston, Massachusetts

Friday, October 16, 2020

10:22 a.m.

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1 APPEARANCES (CONTINUED):
2

3 On behalf of the Plaintiff:
4

5 Kevin S. Clapp, Pro Se
6 79 Brookvale Avenue
7 Brockton, Massachusetts 02303
8 508-588-5388
9

10 On behalf of the Defendant, Mark Cohen:
11

12 David J. Officer, P.C.
13 DAVID J. OFFICER, ESQ.
14 17 Blackthorn Drive
15 Southborough, Massachusetts 01772
16 508-481-5044
17 david@davidofficerlaw.com
18
19
20
21
22
23
24

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1 APPEARANCES (CONTINUED):
2

3 On behalf of the Defendant, John Fanning:
4

5 Law Offices of Daniel Moynihan
6 DANIEL MOYNIHAN, ESQ.

7 271 Main Street, #302

8 Stoneham, Massachusetts 07180

9 781-438-8800

10 moynihanlaw@verizon.net
11

12 On behalf of the Defendant, Vincent Noe:
13

14 Reardon, Joyce, & Akerson
15 MICHAEL J. AKERSON, ESQ.

16 4 Lancaster Terrace

17 Worcester, Massachusetts 01609

18 508-754-7285

19 akerson@rja-law.com
20
21
22
23
24

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1 APPEARANCES (CONTINUED):
2

3 On behalf of the Defendant, Scott Kearns:
4

5 Rogal & Donnellan, P.C.
6 BRIAN ROGAL, ESQ.
7 JOHN DONNELLAN, ESQ.
8 100 River Ridge Road, Suite 203
9 Norwood, Massachusetts 02062
10 781-255-1200
11 brogal@rogalanddronnelan.com
12 jdonnellan@rogalanddronnelan.com
13

14 On behalf of the Defendants, Brian Tully and Brian
15 Brooks:
16

17 Rafanelli & Kittredge
18 ALANA BLATT CLEMENTS
19 1 Keefe Road
20 Acton, Massachusetts 01720
21 978-369-6001
22 aclements@rkpclaw.com
23
24

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WITNESS:

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(by Mr. Moynihan)

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(by Mr. Donnellan)

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E X H I B I T S

EX. NO.

PAGE NO.

Exhibit 32

Judgment

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(Exhibit 32 electronically marked and attached to transcripts.)

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6 PROCEEDINGS

7 THE STENOGRAFHER: This is Valerie Johnston. I
8 am a Registered Professional Reporter, and I am a
9 Notary Public in the Commonwealth of Massachusetts.10 This deposition is being taken remotely. This
11 witness is appearing remotely from O'Brien & Levine
12 Court Reporting Solutions, 68 Commercial Wharf,
13 Boston, Massachusetts.14 The attorneys participating in this proceeding
15 acknowledge their understanding that I am not
16 physically present in the proceeding room, nor am I
17 physically present with the witness, and that I will
18 be reporting this proceeding remotely.19 They further acknowledge that, in lieu of an
20 oath administered in person, the witness will
21 verbally declare his testimony in this matter under
22 the pains and penalties of perjury. The parties and
23 their counsel consent to the arrangement and waive
24 any objections to this manner of proceeding.25 Please indicate your agreement by stating your
26 name and your agreement on the record, after which I
27 will swear in the witness and we may begin.

28 MR. ROGAL: Brian Rogal. I agree.

29 MR. DONNELLAN: Joe Donnellan. I agree.

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1 MR. MOYNIHAN: Dan Moynihan. I agree.
2 MR. AKERSON: Michael Akerson. I agree.
3 MS. CLEMENTS: Alana Blatt Clements, and I
4 agree.
5 MR. OFFICER: David Officer. I agree.
6

7 KEVIN S. CLAPP,
8 having been satisfactorily identified, and duly
9 sworn by the Notary Public, was examined and
10 testified as follows:

11
12 MR. MOYNIHAN: Are we ready?
13 THE WITNESS: Seems to be.
14 MR. MOYNIHAN: Are we -- are we taking
15 pictures of the clothes, Joe or -- or --
16 THE WITNESS: I have no control over that.
17 MR. DONNELLAN: And I'm hoping -- and,
18 Mr. Clapp, have you brought those clothes?
19 THE WITNESS: Yes, I did. I've said that
20 three times. Oh, what a beautiful poodle.
21 (Inaudible) the other one.
22 MR. DONNELLAN: Would me a favor and just
23 lay them out on the table in front of you, and the
24 staff person will come in and take a picture for us.

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1 know, God has a strange way of bringing people
2 together.

3 Q. Yup.

4 Now, you were arrested on March 8th of
5 2016, correct?

6 A. I don't remember what day in March. It --
7 it was either the 6th or the 8th.

8 Q. Okay. And that -- that's not here nor
9 there. But you were arrested at your house,
10 correct, and that's the subject -- one of the
11 subjects of this lawsuit?

12 A. Right.

13 Q. All right. And you're aware that Trooper
14 Fanning was not part of that execution of that
15 arrest, correct?

16 A. Well, he wasn't there.

17 Q. Correct. So he did not take part in the
18 arrest itself?

19 A. No.

20 Q. Okay. And Trooper Fanning did not take
21 part in the transport of you from the barracks into
22 the ambulance, do you agree?

23 A. No.

24 Q. Okay. So you've named a number of

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1 Defendants in this case, and one of them is my
2 client, Mr. Fanning. And so what is your basis of
3 liability against Mr. Fanning today?

4 A. What is my basis of liability against him?
5 He orchestrated the whole thing from start to end.

6 Q. Okay. And what makes you believe that?

7 A. Well, if you got the transcripts from the
8 first court -- and he did a good job with the second
9 one. That certainly shows the liars that the State
10 Police were. I thank you for that, by letting me
11 know because I got two -- two transcripts.

12 But, if you were to get, Dan, the
13 transcript from the first trial, I don't know if
14 you'd call it a circus or what you'd call it. It
15 went on for four days in Dedham.

16 And Leo Murray, I'm glad you're going to
17 subpoena him at this trial, because he was supposed
18 to be a star witness for the Commonwealth. He ended
19 up being a star witness for me. He told the jury I
20 was the nicest guy. He never thought it was going
21 to lead to this. He didn't mean for this to happen.
22 He -- he -- he was ready to snap. Leo can't be put
23 under pressure.

24 Then one day he forgot his glasses, so I

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1 gave him mine. He said, "See, jurors, see how nice
2 this man is." He's supposed to be for the
3 Commonwealth. Then, when he left, he hugged me and
4 he said, "I hope you win."

5 John Fanning paid me a hundred dollar to
6 sweep this under the rug. He also told me that on a
7 phone call. So the word, conspiracy, comes into
8 this.

9 Although John Fanning never did anything
10 physically to me, it's my belief with what I know
11 and have investigated and been told, that John
12 Fanning had a conspiracy to put my mother's case
13 under the rug, and that's exactly what he did, and
14 he could have stopped this case any time he wanted
15 to.

16 Now, what's unusual, if you're not a police
17 officer, usually, they'll go forward with charges,
18 but if you're a police officer, a state trooper, and
19 John went to the proper people and said, look it,
20 you know, I just want to make peace, I've known
21 Kevin, he knew my family, we've helped each other,
22 this is ridiculous, these charges have to be
23 dropped, he could have done that at any time, but he
24 chose not to, and it -- the -- it -- it was -- for

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1 whatever reason -- and I don't think I'll ever know
2 the reason.

3 well, I do know the reason. He -- and
4 there was a lot of testimony at that first trial
5 that confirmed my suspicion, Mr. Moynihan, that he
6 was involved in this, that he was grossly involved
7 in it.

8 Q. That he was involved in what, sir?

9 A. In the conspiracy of the -- the conspiracy
10 of my mother's murder.

11 Q. Okay. Well, let's -- let's take one step
12 at a time. I'm asking you about this case. But now
13 that you brought it up, let me go back to that.

14 A. Well, it's all intertwined.

15 Q. Okay. You believe that -- well, let me ask
16 you this: Where was your mother a patient?

17 A. She was a patient at so many rehab centers
18 I can't possibly know.

19 Q. Let me be more -- let me be more specific.
20 I believe, in emails, you've articulated your belief
21 that she was abused or -- or beaten at a particular
22 nursing home, is that correct?

23 A. I don't do emails. I don't know how --

24 Q. You -- you -- you emailed Mr. Noe and Mr.

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1 Q. All right. And so this text goes on to say
2 that -- that they told you, correct, that there was
3 a trooper assigned to Morrissey's office who hates
4 you is what you say they told you, correct?

5 A. Right.

6 Q. And they went on to tell you that he, this
7 trooper, bagged this case? Is that what --

8 A. Right.

9 Q. -- your allegation is?

10 A. Right.

11 Q. And --

12 A. But this is coming from them to me.

13 Q. Correct. And these are the two Quincy
14 cops?

15 A. Right.

16 Q. And your position here in this text and in
17 this case, I guess, is that they looked into a
18 notebook and said that his name was Fanning?

19 A. Right.

20 Q. Okay. So these two cops -- Quincy cops are
21 the ones that gave you this notion that Trooper
22 Fanning, as you say, bagged your mother's case, is
23 that accurate?

24 A. well, they were the first ones that put it

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1 in my head until Leo Mary texted me that night
2 before I was arrested and said young John is the one
3 that swept it under the rug. So now I have two
4 things swirling in my head.

5 Q. Where was that -- where is that text
6 from?

7 A. Well, I don't know if it's here or if
8 it's -- it's -- it's --

9 Q. Well, let me ask -- let me ask you to -- to
10 tell me what did -- so your position is one of
11 your -- one of the -- the pillars of your --

12 A. Oh, it's on the next page.

13 Q. Of the text?

14 A. Yeah. Yeah. There's -- there's...

15 Q. Where is it, sir?

16 A. Well, there is -- I have to go through the
17 whole thing. But I mean, it starts at -- you know,
18 there's a lot of texts here. If you look at Part 7
19 capitalized. Again, I'm talking to Vinnie. (As
20 read) "How ironic, Vin. I saved his son's life, and
21 he conspired to take my mother's life, and last
22 night the frosting was put on the cake, and then
23 cousin Leo tells me that Fanning told Leo that he,
24 Fanning, will make sure my mother's beating case

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1 goes nowhere. I will tell you, Vin, this is not
 2 good. My mother always liked John, Jane, and the
 3 kids, even had them over for dinner. Even my mother
 4 said tell both John and Jane about what Diane did to
 5 Luke in the tub. I truly believe they all have
 6 Satan in them. The devil can only work through
 7 people. They need an exorcist. The devil must be
 8 removed. They are so full of evil. Gee Vin, how
 9 odd. Cousin Leo has had his phone off all day and
 10 Cousin Leo don't -- don't lie. Like Leo said, I
 11 have done, meaning me, I have done so much for all
 12 of them. They're just so ungrateful," and -- and
 13 there was more than that that Leo said. I think
 14 there's more texts, because there's lower casings in
 15 this.

16 Q. Right. So -- so, just so I'm clear, the
 17 basis of your allegation against Mr. Fanning for
 18 conspiracy is the two Quincy cops, correct? That's
 19 one -- that's one pillar?

20 A. Yeah. I mean, this is what they --

21 Q. And then -- and then an alleged text from
 22 Leo the night before you made a threat against
 23 Mr. Fanning?

24 A. Say that again, the last part.

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1 Q. well, let me break it up. The -- the
2 second pillar of your conspiracy theory is this text
3 from Leo, is that your testimony?

4 A. Right. well, that -- right.

5 Q. Okay. And so here you say that Cousin Leo
6 don't lie, correct?

7 A. Right.

8 Q. So you believe Leo is always truthful?

9 A. Oh, I don't think he's always truthful. It
10 depends whether he's drunk or high.

11 Q. well, if he was drunk or high, when he --

12 A. well, you -- if you -- if you listen to the
13 tapes when he made the 911 call saying, when I
14 threatened John Fanning and Jane Fanning's lives to
15 kill them, you would certainly think, as the jury
16 did, that he was under the influence of alcohol
17 and/or drugs.

18 Q. okay.

19 A. He calls them what they call benders, and
20 he goes on -- as he told the jury, he had a
21 blackout. So Leo -- in fact, what Kevin Mullen, the
22 special prosecutor did in his closing, he even told
23 the jury, you know, Leo is an odd duck. I mean, we
24 don't know whether to believe him are or not. I